



Meeting of the Compliance Monitoring Scheme Intersessional Working Group (CMS IWG)

Majuro, Republic of Marshall Islands

25 September 2018

BACKGROUND NOTE ON THE REVIEW OF THE COMPLIANCE MONITORING SCHEME

WCPFC-2018-CMSIWG-02

10 September 2018

Paper by the Secretariat

Purpose

1. To briefly review the background to the Review of the Compliance Monitoring Scheme, and to overview the process that the Compliance Monitoring Scheme Intersessional Working Group (CMS IWG) has undertaken to date, in response to its mandate by WCPFC14.

Background

2. The function of the Technical and Compliance Committee in respect of compliance and monitoring implementation of and compliance with conservation and management measures, is set out in the WCPFC Convention Article 14 paragraphs 1 and 2. These are:

Article 14(1) The Function of TCC shall be to:

(a) provide the Commission with information, technical advice and recommendations relating to the implementation of, and compliance with, conservation and management measures;

(b) monitor and review compliance with conservation and management measures adopted by the Commission and make such recommendations to the Commission as may be necessary; and

(c) review the implementation of cooperative measures for monitoring, control, surveillance and enforcement adopted by the Commission and make such recommendations to the Commission as may be necessary.

Article 14(2) In carrying out its functions, the Committee shall:

(a) provide a forum for exchange of information concerning the means by which they are applying the conservation and management measures adopted by the Commission on the high seas and complementary measures in waters under national jurisdiction;

(b) receive reports from each member of the Commission relating to measures taken to monitor, investigate and penalize violations of provisions of this Convention and measures adopted pursuant thereto;

...

(g) report to the Commission its findings or conclusions on the extent of compliance with conservation and management measures; and

3. Since 2011, the Commission has operationalized some of the TCC functions and tasks through the implementation of its Compliance Monitoring Scheme. Over the eight years of implementation the stated purpose in the CMM for the Compliance Monitoring Scheme has remained unchanged. The stated purpose in CMM 2017-07 is to:

“To ensure that Members, Cooperating Non-Members and Participating Territories (CCMs) implement and comply with obligations arising under the Convention and conservation and management measures (CMMs) adopted by the Commission. The Scheme is designed to:

- (i) assess CCMs’ compliance with their obligations;*
- (ii) identify areas in which technical assistance or capacity building may be needed to assist CCMs to attain compliance;*
- (iii) identify aspects of conservation and management measures which may require refinement or amendment for effective implementation;*
- (iv) respond to non-compliance through remedial options that include a range of possible responses that take account of the reason for and degree of non-compliance, and include cooperative capacity-building initiatives and, in case of serious non-compliance, such penalties and other actions as may be necessary and appropriate to promote compliance with CMMs and other obligations of the Commission; and*
- (v) monitor and resolve outstanding instances of non-compliance.*

4. The inaugural CMM (*Conservation and Management Measure on the Compliance Monitoring Scheme – CMM 2010-03*), and the six iterations thereafter (2011 – 2015, and 2017) have included gradual changes to the processes for developing, reviewing, evaluating and finalizing the annual Compliance Monitoring Report (CMR). Alongside the evolution of the CMM on CMS, the Commission has also taken decisions to prescribe the scope and schedule for obligations to be reviewed through the Compliance Monitoring Scheme. In terms of support from the Secretariat to the Compliance Monitoring Scheme, in 2012 the Commission made a multi-year budgetary commitment to Secretariat IMS development that has included the Secretariat introducing WCPFC online systems for annual reporting, CMR and compliance cases. The Secretariat has also made efforts to incrementally enhance the integration of and MCS data analysis capabilities of the Secretariat, with a view to better utilizing existing WCPFC data and information sources in support of preparation of draft CMRs.

2017: Review of the Compliance Monitoring Scheme by an Independent Panel

5. In 2014, at WCPFC11, FFA members proposed that an independent review and audit of the Compliance Monitoring Scheme was needed to “take stock of where we stand in terms of its effectiveness and where efficiency gains can be made in meeting the CMS’ objectives.” (WCPFC11-2014-DP10).” The key points that were expressed at the time in response to this proposal, included that:
 - There is a need to properly assess the likely cost implications of an audit alongside other priorities within the 2015 budget;
 - It would be beneficial to allow more time for the Compliance Monitoring Scheme to operate before a review is undertaken, noting that a revised measure will be developed in 2015; and
 - It is timely to undertake a review to make sure the Compliance Monitoring Scheme is meeting its objectives and making a positive contribution to the work of the TCC as it has been implemented for four years already.
6. The decision by the Commission was that “there should be an audit of the CMS at some point”. Furthermore, the Commission tasked the Secretariat to prepare a paper for TCC11 (in 2015), and to include consideration of the costs of conducting an independent audit of the CMS” (WCPFC11 Summary Report paragraph 674)

7. In 2015, the Secretariat tabled a paper at TCC11 *Concept of an independent audit or independent review of the WCPFC Compliance Monitoring Scheme* (TCC10-2011-10). TCC11 noted the paper and considering that a revised CMM was being developed for adoption at WCPFC12, recommended that the review be delayed until after the revised CMM had been in place for few years. At WCPFC12 the Commission adopted CMM 2015-07 *Conservation and Management Measure for the Compliance Monitoring Scheme* and agreed to the CMM having a two-year duration. The Commission also agreed the Compliance Monitoring Scheme would be reviewed at the end of 2017 by an independent panel selected by the Executive Director in consultation with Members. Further TCC12 was asked to provide recommendations to WCPFC13 on the terms for the independent review.
8. In 2016, the consideration during TCC12 of the terms for the independent review centered around a paper prepared by the Secretariat *Terms for a review of the Compliance Monitoring Scheme* (TCC11-2016-11). At WCPFC13 (2016), the Commission approved the Terms for a Review of the Compliance Monitoring Scheme (CMS) (WCPFC13 Summary Report, paragraph 142 & Attachment H). The terms stated that an Independent Panel would be appointed, who will be charged with evaluating the CMS considering the questions set out in the Terms of Reference and with preparing a report which makes recommendations to the Commission for consideration by Members. The Independent Panel was appointed in April 2017 and was comprised of Don MacKay (Chair), Andrew Wright and Christopher Rogers. The objective of the review was to assist CCMs to improve compliance with the Convention and CMMs and to this end the review will be forward looking and provide clear recommendations on how best to implement the CMS.
9. At WCPFC14 (2017), a substantive report was presented by the Independent Panel (WCPFC14-2017-25B) and a short paper by the Secretariat was also tabled WCPFC14-2017-25A. The final report from the Panel was issued on 7 March 2018 for consideration by Members. On 19 March 2018 the final report was reissued, with the only change being the inclusion of an Executive Summary that was inadvertently omitted from the original submission Members (WCPFC Circular 2018-15 and **WCPFC-TCC14-2018-10C**).

2018: Continuing the Review through the CMS-IWG

10. At WCPFC14 (2017), the Commission established an Intersessional Working Group on the Review of the Compliance Monitoring Scheme (CMS IWG). The tasks of the CMS IWG are to facilitate consideration of the Report from the Independent Review of the CMS and develop a proposed CMM for the Compliance Monitoring Scheme for consideration at WCPFC15 (2018). The Commission agreed that the Republic of Marshall Islands would lead the Intersessional Working Group. (WCPFC14 Summary Report, paragraph 461)
11. On 9 March Circular 2018-16 was sent out to commence the work of the CMS IWG and requesting that CCMs and observers provide their nominations of participants to be included in the virtual electronic exchanges (Circular 2018-16).
12. On 24 April the CMS-IWG confirmed that the CMS IWG workplan was agreed by the CMS-IWG participants. Since April, the workplan has been revised three times, but the only changes have been to include additional participants. A copy of the latest version of the workplan is enclosed as **Attachment 1**.
13. A reference page was established on the WCPFC website to provide a list of submissions from CMSIWG participants and other communications from the CMS IWG Chair to the participants.¹ At

¹ Copies of all CMS IWG documents can be found at this link on the WCPFC Website:
<https://www.wcpfc.int/cms-iwg>

the time of writing this paper, the current list of documents posted to the reference page is reproduced as **Attachment 2**.

14. During March, the CMS IWG Chair asked participants to provide initial comments on the Independent Panels report in view of the IWGs task to develop a CMM. Comments were received from: *Japan, Australia, ISSF, PEW, Chinese Taipei, PNA+Tokelau, USA, and New Zealand*. A paper has been prepared by the Secretariat that summarises the initial views of IWG participants as submitted to the CMS IWG: *Comments CMS IWG participants have submitted on the Final Report from the Independent Panel to Review the CMS (WCPFC-TCC14-2018-10B)*.
15. During April and May, CMS IWG Chair asked participants to provide comments on a proposed list of principles for the CMS that had been prepared considering the submissions by CMS IWG participants on the Independent Panels Report. Comments were received from: *ISSF, New Zealand, PNAO, Chinese Taipei, USA, PEW, FFA Secretariat and Australia*. A paper has been prepared by the Secretariat that compiles the views of IWG participants as submitted to the CMS IWG: *Compilation of CMS IWG Comments on the "Draft List of principles document" (WCPFC-TCC14-2018-10D)*.
16. In early July, noting that the agreed timeframes in the IWG workplan had set out that a draft proposed CMM for CMS would be available in advance of TCC14 and expecting that IWG participants had also been considering draft texts, the CMS IWG Chair requested submissions of draft text from any IWG participants during July. In early July, the CMS-IWG received from FFA Members, a draft CMM proposal on CMS (**WCPFC-CMSIWG-2018-03**). Comments from three IWG participants including on the FFA Members draft proposal were received from: *ISSF, PEW, and USA*.
17. In early July, the CMS IWG Chair had also sought the views of IWG participants on their ability to be involved in consultations on the draft CMM in the margins of SC14. On 11 August 2018, the Chair provided for the information of all CMS IWG participants a Chair's report of the Informal Consultations that were held in the margin of SC14 meeting. Representatives from seventeen (17) CCMs, the FFA Secretariat, PNA Office and PEW Charitable Trusts attended the informal consultations. As some IWG participants confirmed they could not participate in the consultations, the IWG consultations that did take place during the lunch-time break on Wednesday 8th August 2018 were informal. In communicating the report from the informal consultations, the CMS IWG Chair sought the support and concurrence from all CMS IWG participants on two matters, which received informal support during the informal consultations:
 1. That the draft CMM proposal from FFA members can be used as a starting point for the CMSIWG discussions going forward; and
 2. Support from the CMS IWG to the convening of a face-to-face meeting of the CMS-IWG on Wednesday 25th September 2018 (as advised in WCPFC Circular 2018-47).
18. On 17 August 2018, the Secretariat issued an updated Meeting notice for TCC14 and related meetings. (Circular 2018-54). This notice also confirmed that a face-to-face meeting of the CMS IWG was approved, through an intersessional decision, and would be held on Tuesday 25th September in Majuro, Republic of Marshall Islands immediately prior to TCC14. The provisional agenda and schedule for the CMS IWG face-to-face meeting was issued on 17 August (**WCPFC-CMSIWG-2018-01**).

Recommendation

19. The CMS IWG Participants are invited to note the paper.

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WCPFC Intersessional Working Group on the Review of the Compliance Monitoring Scheme (CMS IWG)

Work Plan

24 April 2018²

This paper: (a) the scope of the task from WCPFC14, (b) establishes a plan for completing the work, and (c) lists the group's participants.

a. Scope

As agreed at WCPFC14 the tasks of the IWG will be to facilitate consideration of the Report from the Independent Review of the CMS and develop a proposed Conservation and Management Measure for the Compliance Monitoring Scheme for consideration at WCPFC15. (refer to WCPFC14 Report paragraph 461)

b. Workplan

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| i. Issue Final Report from Panel to review the CMS (Circ. 2018-15) | 7 March 2018 |
| ii. Commence CMS IWG (Circ. 2018-16) | 9 March 2018 |
| iii. Request initial comments on Panel's Report on review of CMS, and in view of task to develop proposed CMM for CMS (Circ. 2018-16) | 30 March 2018 |
| iv. Secretariat creates CMS IWG reference webpage
https://www.wcpfc.int/cms-iwg | 9 April 2018 |
| v. Development of draft workplan (via email) | April 2018 |
| vi. Development of draft consultative proposed CMM for CMS (via email) | April – August 2018 |
| vii. Consideration of draft proposed CMM for CMS (at TCC14) | 26 Sept – 2 Oct 2018 |
| viii. Further discuss Final Report from Review Panel (at TCC14) | 26 Sept – 2 Oct 2018 |
| ix. Finalize draft proposed CMM for consideration at WCPFC15 | 9 November 2018 |
| x. Commission to consider proposed CMM for CMS as prepared by CMS IWG (at WCPFC15). The Final Report from Panel to Review the CMS will also be considered. | 3 – 7 December 2018 |

² Updated 5 June, 20 June and 11 August 2018, to include additional IWG participants

c. **CMS IWG participants** (*nominated in response to Circular 2018-16 as at 11 Aug 2018*)

Delegation	Name
Republic of Marshall Islands	Glen JOSEPH (Chair)
Australia	Jenny BALDWIN
Australia	Mat KERTESZ
Canada	Christopher (Chris) FRENCH
Canada	Jerry Walsh
European Union	Angela MARTINI
European Union	Stamatios VARSAMOS
European Union	Orlando FACHADA
Japan	Wataru TANOUE
Japan	Takahiro FUJIWARA
Republic of Korea	Seunglyong (Leon) KIM
Republic of Korea	Minjeong CHO
Republic of Marshall Islands	Sam LANWI
Republic of Marshall Islands	Laurence EDWARDS
New Zealand	Megan LINWOOD
New Zealand	Joanne DOW
Papua New Guinea	Joseph KENDOU
Chinese Taipei	Shirley, Shih-Ning Liu
Chinese Taipei	Joy, Hsiang-Yi Yu
Tonga	Poasi NGALUAFE
United States of America	Tom GRAHAM
United States of America	Emily CRIGLER
FFA Secretariat	Manu TUPOU-ROOSEN
FFA Secretariat	Pamela MARU
FFA Secretariat	Viv FERNANDES
PNA Office representative	Wez NORRIS
TCC Chair	Alexa COLE
WCPFC ViceChair	Riley KIM
SC Chair	Ueta Faasili Jr
Secretariat	Feleti TEO
Secretariat	Penny RIDINGS
Secretariat	Lara MANARANGI-TROTT
Secretariat	'Ana TAHOLO
SPC-OFP (Scientific Services Provider)	Peter WILLIAMS
International Seafood Sustainability Foundation	Holly KOEHLER
	Claire VAN DER GEEST
The Pew Charitable Trusts	Dave GERSHMAN
Birdlife	Karen BAIRD

List of documents posted to CMS-IWG Reference page on website
<https://www.wcpfc.int/cms-iwg>

Doc reference	Title	Date
Circular 2018-15	Final Report from the Independent Panel to review the Compliance Monitoring Scheme [with Executive Summary] <i>Don MacKay, Andrew Wright and Christopher Rogers</i>	7 Mar 2018
Circular 2018-16	Circular to commence the work of CMS-IWG file attachment	9 Mar 2018
WCPFC14 Report pgs 73 - 81	Excerpt from WCPFC14 Summary Report - Agenda 10 on WCPFC CMS file attachment	16 Mar 2018
JP comments ref_Circular 2018-16	Japan submission: General comments on the CMS Review Report in reply to Circ 2018-16	27 Mar 2018
AU comments ref_Circular 2018-16	Australia submission: initial comments on the Report of the Independent Review of the CMS	29 Mar 2018
ISSF comments ref_Circular 2018-16	ISSF Submission: Comments on the Report of the Independent Review of the WCPFC CMS	30 Mar 2018
PEW comments ref_Circular 2018-16	PEW Submission: Comments on the Final Report from the Panel to Review the CMS	30 Mar 2018
TW comments ref_Circular 2018-16	Chinese Taipei submission: Comments on the CMS Review Panel's report in reply to Circ 2018-16	30 Mar 2018
PNA+ comments ref_Circular 2018-16	PNA + Tokelau submission: Initial PNA Comments on the Report of the CMS Review Panel – from PNA Chair	31 Mar 2018
U.S. comments ref_Circular 2018-16	USA submission: Comments from the U.S. on the Final report of the Independent Review of the CMS	4 Apr 2018
NZ comments ref_Circular 2018-16	NZ submission: Comments on the CMS Review	6 Apr 2018
CMS IWG Chair_April 2018	Communication from Chair to CMS IWG participants requesting comments on a document presenting a draft list of principles to guide the development of a CMM for the CMS_April 2018	11 Apr 2018
CMS IWG Workplan	CMS IWG Workplan - 2018_revision 2	24 Apr 2018
ISSF comments ref_April 2018 communication	ISSF Submission: Comments on draft list of principles document	25 Apr 2018
NZ comments ref_April 2018 communication	NZ Submission: Comments on draft list of principles document	27 Apr 2018
PNAO comments ref_April 2018 communication	PNAO Submission: Comments on draft list of principles document	27 Apr 2018
TW comments ref_April 2018 communication	Chinese Taipei Submission: Comments on draft list of principles document	27 Apr 2018
USA comments ref_April 2018 communication	USA Submission: Comments on draft list of principles document	27 Apr 2018
PEW comments ref_April 2018 communication	PEW Submission: Comments on draft list of principles document	28 Apr 2018
FFA comments ref_April 2018 communication	FFA Secretariat Submission: Comments on draft list of principles document	31 May 2018

Doc reference	Title	Date
AU comments ref_April 2018 communication	Australia Submission: Comments on draft list of principles document	19 Jun 2018
FFA proposal ref_July 2018 communication	FFA Submission: proposal for CMM on the CMS	5 Jul 2018
ISSF comments ref_July 2018 communication	ISSF Submission: Comments on FFA Proposal for CMM on the CMS	25 Jul 2018
PEW comments ref_July 2018 communication	PEW Submission: Comments on FFA Proposal for CMM on the CMS	31 Jul 2018
U.S. comments ref_July 2018 communication	United States Submission: Comments on FFA Proposal for CMM on the CMS	31 Jul 2018
Circular 2018-47	Proposal for CMS IWG Meeting	9 Aug 2018
CMS IWG Chair_Aug 2018	Chair's communication re Informal Consultations held 8th August (in margins of SC14)	11 Aug 2018
Circular 2018-48	Updated Meeting Notice for TCC14 and related meetings - confirming CMS IWG meeting on 25th September	17 Aug 2018